

Testimony of

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April 14, 2004

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April 12, 2004

Honorable Senator Orrin Hatch, Chairman
United States Senate Committee on the Judiciary
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I want to thank Senator Hatch, and the Senate Committee on the Judiciary for this opportunity to discuss some of the positive and negative implications of the USA Patriot Act.(Act)

First, I must offer some disclaimers with respect to my testimony today. The views which I express are not the views of the Governor of the State of Utah, The Coalition for Utah's Future or Envision Utah and are not offered in my capacity as Chairperson of the Envision Utah Governor's Quality Growth Awards Committee. They are not the views of the Treasurer of the State of Utah or of the Utah State Money Management Council, of which I serve as Vice Chairperson. Further, what I say does not represent the views of KUED Television or the University of Utah, as I currently serve as the President of the Friends Board of KUED TV. Nor are they the views of The United States Commission on Civil Rights, which has not had hearing or taken a formal position on the USA Patriot Act as a whole or various provisions of the Act in particular. My views do express the sentiments and concerns of many of the members of The Utah Advisory Committee to the United States Commission on Civil Rights, which I chair.

We are all painfully aware that September 11, 2001 changed our nation and our individual lives in many ways. The acts of the terrorists brought death and destruction to our shores and fear to our hearts. The aftermath of that day effects us all and impacts each of us in many ways some known and many unknown.

The USA Patriot Act (ACT) was passed in haste, without much in the way of debate, it passed the US Senate by a vote of 99 to 1. The USA Patriot Act stands for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act," becoming Public Law 107-56 on the 26th of October, 2001.

Did the terrorists win the war on September 11th? They did if we sacrifice our freedoms to Governmental intrusion. They did if we are no longer free to go about our daily lives without the fear of Government intrusion into our homes our churches and our places of business. They did if we show we are afraid of them. They did if we retreat from our values in the face of their ongoing threat.

My purpose in being here today is raise a voice of caution.

We are a free people and we will remain so if we do not weaken. Remembering these words: "We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights,

that among these are Life, Liberty and the Pursuit of Happiness..." and: "We the people of the United States, in Order to form a more perfect Union, establish justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

This nation was formed under the rule of law, not the rule of man. We are a nation of laws. We are a nation "of the people by the people for the people".

This Act was, if we are to believe our leaders, drafted and passed in 45 days from the attack on September 11th. For the purpose of providing for "Domestic Tranquility" and for the "Common Defense" The Act is very technical and precise. Therefore, it is not a stretch to assume that large portions of the Act were drafted in advance of September 11th 2001, and were waiting for some catalyst to get it before Congress. September 11th was that catalyst. Normally such a complex and important piece of legislation would take many months and much debate before being passed. Contrary to the speed with which the Act was passed, many of the rules and regulations implementing the Act have yet to be written, now more than two years from the date of its passage. I am currently working with the Utah Attorney General's office and the office of the State Treasurer to draft a single rule creating oversight of Investment Advisors, and this experience I find proper drafting takes a great deal of time to do it right.

When looking at any law, rule or regulation, we must ask ourselves is the restriction upon our Constitutionally-guaranteed rights deserving the protection that the law is intended to provide and is it worth the cost? We know in advance that those who seek to break the law will do so, law of no law. The words of Benjamin Franklin are as true to day as they were when first written, "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."

There is much about the USA Patriot Act (ACT) to laud and applaud. There is also much to fear. There are many aspects of the legislation that were both needed and appropriate. Those sections addressing. Money Laundering Sections 318 and 352 and others, Money transfers domestic and foreign, Sections 328 and 359, as will be others. Interagency cooperation and Interagency information sharing, Sections 106 and 504 and many others.

We are aware that the Immigration and Naturalization Service (INS) was empowered under prior law to keep track of and to intercept illegal aliens. Had that agency used the tools it had and had it the mind set to carry out its charge maybe history would be different, who knows. The same people who dropped the ball at INS before September 11th 2001 are still running the Agency, and they are still failing to enforce the law and do their job.

Once the report of the 911 Commission is released we will know much more of why and how September 11th took place. That report should form the framework for revisions to the Act and the implementation of new laws rules and regulations. The Act as it was passed in a knee jerk reaction to the attack of September 11th. It was not properly vetted by the House or the Senate.

Is our liberty in danger from the Act? The Act permits, through various Governmental agencies, the use of so called "Sneak and Peak Searches". These searches may issue without the production of evidence that the person who is the subject of the search is the target of a criminal investigation, i.e. a demonstration of probable cause. What lawyers would call permission to conduct the ultimate fishing expedition. Average law abiding citizens have been assured they have nothing to fear from the Act. Many in government argue that our government acts only in our best national interest. Taking a look back we find, Nuclear Testing in Nevada, Impounding of Japanese Americans during World War Two, the Alien Sedition Act of 1798, and the treatment of our Native Americans, through numerous treaties made and broken, all actions by a trusted government.

The Act permits the use of modern technology to pry into any e-mail message, tapping cell phones along with wired phones (Sections 201 and 204), through the use of warrants issued by a new special court Section 208 of the Act. Further, under Section 212 of the Act, an internet provider can not alert a citizen that he or she is under the watchful eye of the Authorities.

E-mail is defined in the Act as the same form of communication as ordinary telephonic communication. The use of E-mail to facilitate commerce is growing very fast and affects us all. Much of our commercial E-mail not only contains a

message like a phone call, but also contains attachments such as documents and pictures like the mail. E-mail should be as secure from the prying eye of the authorities as materials handled by the United States Post Office. We must feel secure in our sanctity to communicate with each other. It is a First Amendment Right, not a privilege. Doctors and lawyers must be able to rely upon this medium of communication. That it will remain secure. These professionals must be able to be sure their privilege in communication with patients and clients have not been compromised. The Act, in Section 507, permits the Attorney General or his designee to obtain school records. While not intended to reach US citizens there are no protections. Do school administrators know who is and who is not a US Citizen?

Section 802 defines the term terrorism to mean, "any criminal act that in the view of the Government involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State..."

Once the all seeing eye of the Government is brought into our homes and businesses it will not withdraw. The power set out in the Act that allows the government to define what is an enemy of the State can change with the times that we live in. Today terrorists, tomorrow civil rights marchers.

The Act is very complex and hard to understand, take section 201 as just one example.

"Section 201. Authority to Intercept Wire, Oral, and Electronic Communications Relating to Terrorism.

Section 2516(1) of title 18, United States Code, is amended:

(1) by redesignating paragraph (p), as so redesignated by section 434(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132:110 Stat. 1274, as paragraph (r) and

(2) by inserting after paragraph (p) as so redesignated by section 201(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208: 110 Stat. 3009-565, the following new paragraph:"

Before a person can understand what was stated above you would have to read and cross reference two other specific acts, and that is just portion of section 201. Section 212 reads in part as follows:

"Sec.212 Emergency Disclosure of Electronic Communications to Protect Life and Limb. (A) Disclosure of Contents.

(1) In General-Section 2702 of title 18, United States Code, is amended.

(A) by striking the section heading and inserting the following:

Section 2702. Voluntary Disclosure of customer communications or records:"

Section 212 permits a Governmental agency to invade your private e-mail and review all your communications, The Network or ISP provider under penalty of law can not advise you that your e-mail is being reviewed, The Act makes no provision for privileged communication. As the use of electronic forms of communication increase, we must have more, not less, protection of our methods of communication. The Act provides for a hostile invasion into our lives beyond what is by definition either reasonable or proper. The right of free speech is for us to be secure in what we say in private. There is an expectation of privacy when we use e-mail in our communications with others including our Government.

For an intellectual exercise read and interpret Section 422 of the Act Extension of Filing for reentry deadlines. A seven word title for a section of the act is almost as long as the whole United States Constitution without amendments.

Freedom is gained and maintained only through constant vigilance and with hard work, but Freedom can be lost in a moment, when our leaders react out of fear. Franklin Roosevelt said it best "the only thing we have to fear is fear

itself". Let us as a Nation go forward and preserve our freedoms not out of fear but with courage to meet our foes and dispatch them as we have from our founding as a Nation." This Act by and large was created out of fear of the future and in the smoke and ruins of "Ground Zero". The Act should be revised when the 911 Commission report is received, it should be openly and freely debated. The sun should be allowed to set on those portions of the Act that attack our freedom.. The conservative mantra that we should follow is "the best government is that government that governs least." Trust in the language "We the People."

Thank you for the opportunity to be heard today.

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